

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

PRODIGY CONSULTING OF FLINT, INC.<sup>1</sup>  
Employer

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO  
Petitioner

CASE 7-RC-21888

and

MICHIGAN EDUCATION ASSOCIATION  
Intervenor

APPEARANCES:

Philip J. Gibbons, Jr., Attorney, of Indianapolis, Indiana for the Employer.  
Betsey A. Engel, Attorney, of Detroit, Michigan, for the Petitioner.  
James A. White and Michael M. Shoudy, Attorneys, for the Intervenor.  
Michael F. Smith and Lynne Dietch, Attorneys, for UAW-GM Center for Human Resources, Interested Party.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

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<sup>1</sup> The name of the Employer appears as corrected at the hearing.

<sup>2</sup> The Petitioner and Intervenor filed briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer is a consultant in child care services, and manages and operates a child development center (the Center) located at 4358 Richfield Road, Flint, Michigan. The Petitioner seeks to represent a unit of all full-time and regular part-time teachers<sup>3</sup>, teaching assistants, cooks, and receptionists employed by the Employer at its center, but excluding directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act. The Michigan Education Association (the Intervenor) has represented the petitioned-for unit since January 25, 1993, when it was certified in Case 7-RC-19918. The Employer and Intervenor negotiated successive collective bargaining agreements, the most recent of which expires on November 30, 2000.<sup>4</sup> The Intervenor asserts that the Petitioner cannot represent the petitioned-for employees because of a conflict of interest deriving from it being a party to a management contract with the Employer. The Petitioner disputes that there is any conflict of interest, and the Employer takes no position on the issue.

The Center was established by the UAW-GM Center for Human Resources (CHR). The CHR is a joint program incorporated by representatives of the Petitioner and General Motors Corporation as a non-profit organization.<sup>5</sup> The CHR was established to provide various programs for Petitioner-represented General Motors employees, such as health and safety programs, quality programs, diversity programs, education and training, tuition refund, and work-family programs such as elder-care and child-care. The CHR is administered by a board

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<sup>3</sup> The parties stipulated that teachers are professional employees.

<sup>4</sup> The parties stipulated that there is no contract bar to the election.

<sup>5</sup> The CHR was originally incorporated in 1984 under a different name, dissolved, and reincorporated as the UAW-GM Center for Human Resources in 1994 on a non-stock basis.

of trustees consisting of four representatives from the Petitioner and four representatives of General Motors. The officers of the corporation are two co-executive directors, treasurer, secretary, chief financial officer, and such other officers as the board of trustees deems to appoint.

Currently the co-executive directors are Henderson Slaughter, appointed by the Petitioner, and Larry Knox appointed by General Motors. The chief financial officer is Jim Hill. There are two assistant directors for training, child care, diversity programs, quality process and network, promotional items, and various other programs. There is an appointee from General Motors and an appointee from the Petitioner for each position. Below the assistant directors are joint teams of staff who handle the day-to-day operations of the programs. In addition, CHR employs approximately 150 employees for supervisory and support staff positions, such as secretaries and accountants, who are hired from outside either organization.

The CHR is funded by General Motors pursuant to its collective bargaining agreement with the Petitioner through a national training fund. The formula used to accrue these funds is pegged to regular and overtime hours worked by General Motors unit employees. CHR draws on accrued funds through application to General Motors on an as-needed basis. CHR owns the building and land where the Center is located. The Center is a program of the CHR, and is not independently incorporated. The Center operates 24 hours a day, Monday through Friday, with holidays as prescribed in the current collective bargaining agreement between General Motors and the Petitioner. The Center provides programs for infants through school age children.

On June 16, 1997, CHR contracted with the Employer to manage and operate the Center. The CHR renewed the agreement on June 26, 2000, to run through June 14, 2003. The Child Care Management Agreement provides that the Employer will submit an annual proposed budget to CHR for its approval, and operate within the budget. The Employer appoints a Center director, director of administration, and director of curriculum, pursuant to requirements as set forth in the contract and with approval of the CHR. Karen Eaton is the center director.<sup>6</sup> With regard to staffing, the contract provides that the Employer will hire professional staff and administrative staff pursuant to the contract. CHR and the Employer, jointly and severally, have the right to request the removal of any teacher, subject to the collective bargaining agreement with the Intervenor. However, at least since 1992 when Eaton was hired as Center director, CHR and the Petitioner have had no involvement in the day-to-day operations of the Center.

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<sup>6</sup> The parties stipulated that Eaton is a supervisor within the meaning of Section 2(11) of the Act.

Neither CHR nor Petitioner has hired or fired any staff, or directed Eaton to do the same. Eaton has been responsible for the operations and total management of the Center.

The contract between CHR and the Employer incorporates personnel policies established by the Employer and requires the Employer to notify CHR of any proposed material changes to those policies, and proposed material changes to the MEA/Prodigy collective-bargaining agreement, for CHR approval.

Director Eaton was the Employer's chief spokesperson at the bargaining table during negotiations with the Intervenor in 1997 for the current contract. Before reaching final agreement on the contract, Eaton consulted with the Employer in-house counsel, drafted a budget based on the proposals, and presented it to a "steering committee" for its approval. The steering committee consists of two staff members from the CHR (one a representative of General Motors and one representative of the Petitioner), Employer Regional Director Patti Malloy, Employer Assistant Director Sheila Newhouse, and Eaton. The Employer does not enter into a collective-bargaining agreement with the Intervenor without the approval of the budget by the steering committee.

The Board has long held that a union may not represent the employees of an employer if a conflict of interest exists on the part of the union such that a good faith collective bargaining relationship between the union and the employer could be jeopardized. *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954). In order to find that a union has a disabling conflict of interest, the Board requires a showing of a "clear and present" danger interfering with the bargaining process. The burden is on the party seeking to prove this conflict of interest. There is a strong public policy favoring the free choice of a bargaining agent by employees. *Garrison Nursing Home*, 293 NLRB 122 (1989), citing *Quality Inn Waikiki*, 272 NLRB 1, 6 (1984), *enfd.* 783 F.2d 1444 (9<sup>th</sup> Cir. 1986).

The Board has held that a union's participation in a trust fund does not preclude its representation of the fund's employees where union officials do not represent a majority on the board of trustees and there is no other reason to suppose that the union is unable to approach negotiations with the single-minded purpose of protecting and advocating the interests of employees. *Child Day Care Center*, 252 NLRB 1177 (1980). In *Child Day Care Center*, the Board rejected the administrative law judge's finding that a conflict arose because the union appointed one half of the fund's trustees. However, the Board did find a conflict "solely on the dual role of Carmen Papale as one of the Fund's trustees and as the business agent who services Local 1080(A) (the petitioning union)." In the instant matter, there is no evidence of any connection between the Petitioner representatives on the board of trustees or any other program affiliated with the

CHR, and the Petitioner representatives involved with the instant petition.<sup>7</sup> In *Anchorage Community Hospital*, 225 NLRB 575 (1976), the Board found no immediate danger of conflict of interest despite the union's minority representation on the employer's board of trustees and executive committee, and an interim construction loan to the employer from the union's health and trust fund.

The CHR and Petitioner have no control over the day-to-day management and operations of the Center. The record is devoid of any evidence that the CHR or the Petitioner has hired or fired any Center employee since at least 1972. In contrast, in *Teamsters Local 688 Insurance and Welfare Fund*, 298 NLRB 1085 (1990), relied upon by the Intervenor, the Board found a conflict of interest precisely because "the chief union representative and the trustee of the Fund engaged in the day-to-day management of employment practices."

Based on the above, I find that the Intervenor has failed to meet its burden to establish that a conflict of interest exists if the Petitioner represents the petitioned-for employees.

5. In view of the foregoing, I find that the following employees may constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time employees, including teachers, teaching assistants, cooks, and receptionists employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, excluding all directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

Since the unit set out above includes professional and non-professional employees, the parties stipulated to conducting a "Sonotone" election to ascertain the desires of the professionals as to inclusion in a unit with non-professional employees.

I shall, therefore, direct separate elections in the following voting groups:

Voting Group A:

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<sup>7</sup> Karla Swift signed a notice distributed to employees by Petitioner regarding the filing of the instant petition. Prior to 1997, Swift was a Petitioner representative on the CHR steering committee for the Center. Swift no longer has that position, and the record is silent with regard to any further connection with the Center or the CHR, or what if any role she may play in representing the Employer's employees were Petitioner to be selected as the collective-bargaining representative.

All full-time and regular part-time non-professional employees, including teaching assistants, cooks, and receptionists employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, but excluding all professional employees, teachers, directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

Voting Group B:

All full-time and regular part-time professional employees, including teachers employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, but excluding all non-professional employees, assistant teachers, cooks, receptionists, directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

The employees in the non-professional voting group (A) will be polled to determine whether they wish to be represented by the Petitioner or Intervenor. The employees in the professional voting group (B) will be asked the following two questions on their ballot:

(1) Do you desire to be included with non-professional employees in a single unit for the purposes of collective bargaining?

(2) Do you desire to be represented for the purposes of collective bargaining by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, or the Michigan Education Association?

If a majority of the professional employees in voting group (B) vote “Yes” to the first question, indicating their wish to be included in a unit with non-professional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional voting group (A) to determine whether the employees in the whole unit wish to be represented by either union. If, on the other hand, a majority of professional employees in voting group (B) vote against inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether they wish to be represented by the Petitioner or Intervenor in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the unit with non-professional employees, I find the following will constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time employees, including teachers, teaching assistants, cooks, and receptionists employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, excluding all directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Unit A:

All full-time and regular part-time non-professional employees, including teaching assistants, cooks, and receptionists employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, but excluding all professional employees, teachers, directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

Unit B:

All full-time and regular part-time professional employees, including teachers employed by the Employer at its facility located at 4358 Richfield Road, Flint, Michigan, but excluding all non-professional employees, assistant teachers, cooks, receptionists, directors, assistant directors, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, or the Michigan Education Association.

Dated at Detroit, Michigan this 13<sup>th</sup> day of November, 2000.

(Seal)

/s/William C. Schaub, Jr.

William C. Schaub, Jr., Regional Director  
National Labor Relations Board  
Seventh Region  
Patrick V. McNamara Federal Building  
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339-7575-1200

339-7575-2525



## DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO**

OR

**MICHIGAN EDUCATION ASSOCIATION**

OR

**NEITHER**

## LIST OF VOTERS<sup>8</sup>

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **November 20, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by: **November 27, 2000**.

**Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.**

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<sup>8</sup> If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.